

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- X .

LILLIAN ROBERTS, etc.,

07 Civ. 4834 (DAB)

Plaintiff,

- against -

MARVIN WILLIAMS, etc., *et al.*,

DECLARATION OF  
ARTHUR Z. SCHWARTZ  
IN SUPPORT OF MOTION  
TO RECONSIDER ORDER  
REMANDING ACTION

Defendants.

----- X

Arthur Z. Schwartz declares, under penalty of perjury, as follows:

1. I am counsel to defendant Marvin Williams, individually and as President of Local 1665 of District Council 37, American Federation of State, County and Municipal Employees, AFL-CIO ("Local 1665").

2. This Court issued an order remanding this matter to state court (Exhibit A) after receipt of an *ex parte* application to do so. The application was not filed via ECF or mailed or faxed to counsel for defendant Williams, even though defendant Williams was the party who removed this action to federal court. We knew nothing of it until we got ECF notice of your decision.

3. The underlying petition, filed by District Council 37, the regional union with which Local 1665 is affiliated, reflects only a dispute between DC 37 and Local 1665. It asserts, put simply, that under the DC 37 Constitution Local 1665 did not have authority to invoke the contractual arbitration clause in its contract with the New York Hall of Science. The pleading asserts no dispute with defendant Hall of Science, the employer with which Local 1665 has a

dispute, or with defendant American Arbitration Association (“AAA”), which simply administers the arbitration process. It is clear that the Hall of Science and the AAA are in this case so that any injunction entered extends to them as well, since they have a place in the arbitration process. In other words, they are nominal parties.

4. If anything, the Hall of Science is really a plaintiff. It supports DC 37’s application and made the same motion for the same relief to the arbitrator at around the same time the petition was filed. They are wholly allied with DC 37 in this dispute. In fact, as soon as this Court remanded the matter to state court, the Hall of Science, and not DC 37, alerted the Supreme Court judge assigned to the case *and asked that the Court issue the TRO*. In fact, counsel to the Hall of Science went to Supreme Court, and did not even wait for DC 37 in its effort to get the relief which DC 37 asked for in the petition (see letter annexed as Exhibit B).

5. The “Rule of Unanimity” under 28 U.S.C. § 1447 has exceptions. One is that the non-joining defendant is merely “nominal or formal.” Snakepit Automotive, Inc. v. Superperformance Intern., \_\_\_\_\_ F.Supp.2d \_\_\_\_\_, 2007 WL 1548978 \*7 (EDNY 2007). A second is where the removed claim is a “separate and independent claim,” *Id.* The third is if a defendant is “fraudulently joined.” United Computer Sys. Inc. v. AT&T Corp., 298 F.3d 756, 762 (9th Cir. 2002).

6. As we stated above, the complaint/petition states no claim against the Hall of Science or the AAA. If anything, it should be properly aligned as a plaintiff. If there is a claim against the Hall of Science, it is certainly independent of the “breach of the union constitution” claim by the parent union against its local which served as the basis for removal under 29 U.S.C. § 185.

7. It is unfortunate that the Court, prior to granting this motion, did not allow the parties to litigate it. However, with this brief description of the facts and the discussion of why consent of the remaining defendants should not be required, we believe that it would be appropriate for the Court to revoke its order and maintain its jurisdiction.

8. For the record, we did not file anything but the petition with the Notice of Removal because, in fact, no other documents had been served. A proposed Order to Show Cause had been faxed to our office, but the Supreme Court Judge, Emily Goodman, had not signed it.

9. We request that the Court allow defendant to proceed with this motion without a formal Memorandum of Law.

Dated: New York, New York  
July 13, 2007

  
Arthur Z. Schwartz

**Exhibit A**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
In the Matter of the Application of

LILLIAN ROBERTS, as Executive Director  
of District Council 37, American  
Federation of State, County and  
Municipal Employees, AFL-CIO,

Petitioner,

For an Order and Judgment Pursuant to  
Article 75 of the Civil Practice Law  
and Rules

-against-

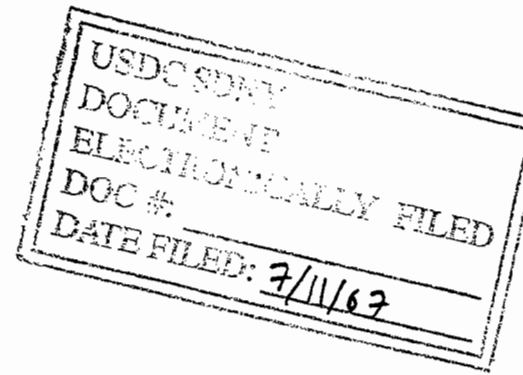
07 Civ. 4834 (DAB)  
MEMORANDUM & ORDER

MARVIN WILLIAMS, Individually and as  
President of Local 1665, District  
Council 37, American Federation of  
State, County and Municipal Employees,  
AFL-CIO; THE NEW YORK HALL OF SCIENCE;  
and THE AMERICAN ARBITRATION  
ASSOCIATION,

Respondents.

-----X  
DEBORAH A. BATTS, United States District Judge.

This suit involves a Collective Bargaining Agreement ("CBA")  
between Respondent New York Hall of Science ("Hall of Science")  
and Local 1665, District Council 37, American Federation of  
State, County and Municipal Employees, AFL-CIO ("Local 1665").  
(See CBA, at Verified Petition, Roberts v. Williams, Index No.  
107904/07 (N.Y. Sup. Ct. 2007) (hereinafter cited as "Verified  
Petition" or "Verified Pet."), Ex. F.) Respondent Marvin  
Williams ("Williams"), who is employed by the Hall of Science as



a Senior Museum Attendant-Guard (Verified Pet. ¶ 5) and the President of Local 1665, has alleged that the Hall of Science violated the CBA by not giving him merit pay increases. (Roberts Aff., Roberts v. Williams, Index No. 107904/07 (N.Y. Sup. Ct. 2007) (hereinafter cited as "Roberts Aff.") ¶ 4.) On January 3, 2007, Williams filed a demand to arbitrate his merit pay claim. (Williams Aff. ¶ 6.) The arbitration is scheduled to take place on July 23-24, 2007. (Verified Pet. ¶ 35.)

On May 31, 2007 - less than two months before the scheduled arbitration - Petitioner Lillian Roberts, who is Executive Director of District Council 37, filed this suit in New York Supreme Court. Roberts is seeking an Order pursuant to Article 75 of the New York Civil Practice Law and Rules, N.Y.C.P.L.R. § 7503, which would require Williams to withdraw his demand for arbitration. (Verified Pet. at 7-8.) Roberts argues that, according to the CBA, "only parties to the Agreement may file a Demand for Arbitration with AAA". (Roberts Aff. ¶ 8.)

On June 6, 2007, Respondent Williams filed a Notice of Removal of Petitioner's New York suit to this Court. (See Notice of Removal.) Williams argues therein that this Court has federal question jurisdiction over this case pursuant to 28 U.S.C. § 1331 and 29 U.S.C. § 185. (Notice of Removal ¶¶ 3-4.) The Notice of

Removal does not indicate whether Williams' Co-Respondents consent to the removal.

Now before this Court is Respondent Hall of Science's Proposed Order which would require Williams to show cause why, inter alia, this suit should not be remanded to New York Supreme Court. According to 28 U.S.C. § 1441(a):

Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.

28 U.S.C. § 1441(a). Removal requires unanimous consent by all defendants or respondents. See Allstate Ins. Co. V. Zhugin, 2004 WL 187147, \*2 (S.D.N.Y. Jan. 30, 2004) ("A removing defendant must present unambiguous written proof that all of the other defendants who had been served in the action consent to removal within the thirty day time period for removal."). See also Bradford v. Harding, 284 F.2d 307, 309 (2d Cir. 1960); Berrios v. Our Lady of Mercy Medical Ctr., 1999 WL 92269, \*2 (S.D.N.Y., Feb. 19, 1999) (citing Bradford); Schepis v. Local Union No. 17, 989 F. Supp. 511, 513 n.1 (S.D.N.Y. 1998).

There is no unanimous consent by Respondents to the removal of this action. On the contrary, Hall of Science has expressly

objected to the removal by filing its proposed Order to Show Cause. Accordingly, Respondent Williams' Notice of Removal cannot satisfy the requirements of the "Rule of Unanimity".

Nor has Williams satisfied 28 U.S.C. § 1446(a), which states that a removal notice must include "a copy of all process, pleadings, and orders served upon such defendant or defendants in such action". 28 U.S.C. § 1446(a). This requirement is not a mere formality; rather, it allows federal courts to examine the underlying allegations so that it may determine, among other things, whether the removal is appropriate. Because Williams has not filed copies of any of these documents with the Court, his Notice of Removal is not proper.



For these reasons, this suit is hereby REMANDED to the Supreme Court for the State of New York, County of New York.<sup>1</sup>

SO ORDERED.

Dated: New York, New York

July 11, 2007

Deborah A. Batts  
Deborah A. Batts  
United States District Judge

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<sup>1</sup> The state court properly may adjudicate over Petitioner's claim. State courts have concurrent jurisdiction over suits which require interpreting collective bargaining agreements. See United Steelworkers of Am., AFL-CIO-CLC v. Rawson, 495 U.S. 362, 368 (1990).

## **Exhibit B**

**SATTERLEE STEPHENS BURKE & BURKE LLP**  
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17321 603-4966

E-Mail: zjasper@ssbb.com

July 13, 2007

*Via Facsimile*

Idina Gorman, Esq.  
Eddie Demmings, Esq.  
Office of the General Counsel  
District Council 37  
125 Barclay St.  
New York, NY 10007-2233

Arthur Z. Schwartz, Esq.  
Schwartz, Lichten & Bright  
275 Seventh Avenue, 17th Floor  
New York, NY 10001

Sasha A. Carbone, Esq.  
American Arbitration Association  
Office of the General Counsel  
1633 Broadway  
10th Floor  
New York, NY 10019

Re: *Roberts v. Williams, et al.* Dkt. No. 107904/2007 –  
Notice of Hearing on Order to Show Cause

Counselors:

This office represents respondent New York Hall of Science in the above-referenced matter.

We write to advise you that today the Hall of Science resubmitted the order to show cause and petition, originally presented by petitioner on June 6, 2007. For your information, the papers submitted were identical in all respects, to the June 6<sup>th</sup> papers that were previously provided to all parties. (A copy of the proposed order to show cause, without the petition or exhibits, is attached for your reference.)

Please be advised that the Court has scheduled a hearing on the interim relief sought by the above-referenced application, on July 17, 2007 at 10:00 a.m.

Very truly yours,

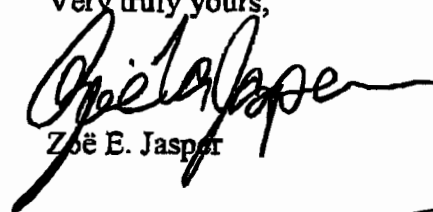
  
Zoë E. Jasper

EXHIBIT B

At I.A.S. Part 17 of the Supreme Court  
of the State of New York, held in and for the  
County of New York at the Courthouse  
therefore, 60 Centre Street, New York, New  
York, on the 6 day of JUNE 2007

**EMILY JANE GOODMAN**

Present: Hon. \_\_\_\_\_

Justice of the Supreme Court

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK**

\_\_\_\_\_  
In the Matter of the Application of

**LILLIAN ROBERTS, as Executive Director of District  
Council 37, American Federation of State, County and  
Municipal Employees, AFL-CIO,**

Petitioner,

For an Order and Judgment Pursuant to Article 75  
of the Civil Practice Law and Rules,

-against-

**MARVIN WILLIAMS, individually and as President of  
Local 1665, District Council 37, American Federation of  
State, County and Municipal Employees, AFL-CIO;  
THE NEW YORK HALL OF SCIENCE; and THE  
AMERICAN ARBITRATION ASSOCIATION,**

Respondents.  
\_\_\_\_\_

**ORDER TO SHOW CAUSE**

Index No. 107904/07

**ORDER TO SHOW CAUSE FOR A PRELIMINARY INJUNCTION**

Upon the annexed Petition, verified May 31, 2007, and the exhibits annexed thereto, the  
Memorandum of Law dated May 30, 2007, the Affidavit of Lillian Roberts, sworn to May 31, 2007,  
and upon all pleadings and proceedings in this proceeding, Respondents, and all other persons  
known or unknown, acting in their behalf or in concert with them in any manner or in any means,

shall show cause before this Court at the Ex Parte Motion Term, for further reassignments to a I.A.S. Part thereof, to be held in and for the County of New York, at the County Courthouse, 60 Centre Street, in the Borough of Manhattan, City of New York, on the \_\_\_\_\_ day of \_\_\_\_\_ 2007, at \_\_\_\_\_ o'clock in the fore/afternoon of that day, or as soon thereafter as counsel may be heard, why an order should not be made and entered herein pursuant to CPLR § 7503:

- 1) declaring improper Respondent Marvin Williams' action in unilaterally filing the Demand for Arbitration with the American Arbitration Association, docketed as Case No.: 13 300 00046 07;
- 2) declaring improper Respondent American Arbitration Association processing and docketing of Case No.: 13 300 00046 07;
- 3) directing Respondent American Arbitration Association from processing the arbitration of Case No.: 13 300 00046 07;
- 4) directing Respondent Hall of Science to refrain from any further participation in Case No.: 13 300 00046 07;
- 5) directing Respondent Marvin Williams to withdraw Case No.: 13 300 00046 07, from the American Arbitration Association, within thirty (30) days from the date an order is entered herein;
- 6) in the alternative, granting Petitioner the right to intervene in the pending arbitration with counsel of its choice;
- 7) granting such other and further relief which this court deems just and proper, together with the costs and disbursements of this proceeding.

**ORDERED** that pending the hearing of this motion, Respondents, and all other persons known or unknown, acting in their behalf or in concert with them in any manner or in any means, are hereby enjoined and restrained as follows:

1. Respondents are directed to stay the arbitration proceeding, Case Number 13 300 00046 07, at the American Arbitration Association, pending the hearing and determination of this motion.

Bc ORDERED that personal service of a copy of this Order to Show Cause, together with all the papers upon which this Order is based, upon the Respondents, on or before the 13 day of June 2007, shall be good and sufficient service.

Oral Argument  
directed.

ENTERED

J.S.C.

J.S.C.

Opposition papers must be delivered to Chambers two business days before return date. Reply papers are due the next day.

EMILY JANE GOODMAN

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**DATE:** July 13, 2007

<b>TO:</b>	<b>COMPANY:</b>	<b>FAX #:</b>	<b>PHONE:</b>
Idina Gorman, Esq. Eddie Demmings, Esq.	District Council 37, General Counsel's Office	212-815-1440	
Arthur Z. Schwartz, Esq.	Schwartz, Lichten & Bright PC	212-358-1353	
Sasha A. Carbone, Esq.	American Arbitration Association, Office of the General Counsel	212-716-5905	

**FROM:** Zoë E. Jasper  
**DIRECT DIAL:** (212) 404-8752

Re: *Lillian Roberts v. Williams, et al.*, 107904/2007

Please see attached.

If you do not receive 5 pages, including this cover letter, please call Florence at (212) 818-9200 Extension 8807.

**Client Name:**

**Client Number:** 029795

**Matter Name:**

**Matter Number:** 00122

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